

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

File No : CIC/DEXSW/A/2022/664968
CIC/DEXSW/A/2023/639662

Anirban Chakraborty

.....अपीलकर्ता/Appellant

VERSUS
बनाम

PIO,
Department of Ex-Servicemen
Welfare, Ministry of Defence,
Room No. 221, 'B' Wing, Sena
Bhavan, New Delhi -110011.

....प्रतिवादीगण /Respondent

Date of Hearing : 15-01-2024
Date of Decision : 17-01-2024

INFORMATION COMMISSIONER : Vinod Kumar Tiwari

The above-mentioned Appeals are clubbed together as the Appellant is common and subject-matter is similar in nature and hence are being disposed of through a common order.

Relevant facts emerging from appeals:

RTI applications filed on : 25-05-2022 and 23-01-2023.
CPIO replied on : 27-07-2022 and 07-03-2022.
First appeals filed on : 31-08-2022 and 04-04-2023.
First Appellate Authority's order : Not on record and 09-05-2023.
2nd Appeals/Complaint dated : 04-12-2022 and 14-08-2023.

CIC/DEXSW/A/2022/664968

Information sought:

The Appellant filed an RTI application dated 25.05.2022 seeking the following information:

“Subject: A requisition for maintaining transparency suo moto in the order of processing of reimbursement claims of the beneficiaries of the Ex-servicemen Contributory Health Scheme at the level of Polyclinics all over India under the Section 4 of the Right to Information Act, 2005.

Information sought under the RTI Act, 2005:

For all the beneficiaries of the E.C.H.S. and in respect of the E.C.H.S. Polyclinics situated all over India:

1) You are requested to henceforth suo moto publish online, on the website of the E.C.H.S., a list containing the following details about all the reimbursement claims processed by a polyclinic in the previous month, under the sections 2(j)(ii), 4(1)(b) (xvii), and 4 (2) of the Right to Information Act, 2005:

a) 8 Name, rank, and the last three digits of the E.C.H.S. card number of the beneficiaries who are claiming reimbursement.

b) Date and mode of submission of their reimbursement claim documents.

c) Entry serial number locally assigned by the polyclinic to such submission, if any.

d) The date on which the parent polyclinic finalized and uploaded the documents of a reimbursement claim in the designated bill processing website, like UTI-ITSL.

e) The date on which the parent polyclinic verified the reimbursement claim, self-uploaded in the designated bill processing website by the beneficiary, for further processing.

f) The date on which the fund allocated to the polyclinic in the previous month for doing local purchase exhausted or became insufficient.

2) It is quite indispensable that the list as generated in due course be positively published per month per polyclinic all over India.”

The CPIO furnished a reply to the Appellant on 27.07.2022 stating as under:

"In this regard, it is informed that "as regard the points highlighted by you regarding publishing of monthly details of all reimbursement claims processed at Polyclinic on ECHS web portal for public display, It is informed that adequate steps have been taken towards ensuring transparency. Also, all online medical Bills are uploaded on BPA Portal wherein a beneficiary can track the status of his claim and know the stage at which the claim is being processed. The beneficiary is entitled to know only about his claim and not about the claim of other beneficiaries due to privacy and confidentiality issues".

Being dissatisfied, the appellant filed a First Appeal dated 31.08.2022. The FAA order is not on record.

Feeling aggrieved and dissatisfied, appellant approached the Commission with the instant Second Appeal.

CIC/DEXSW/A/2023/639662

Information sought:

The Appellant filed an RTI application dated 23.01.2023 seeking the following information:

"1) Gather the records of all the disposed/closed/non-pending cases filed anywhere in India by or against the E.C.H.S. in the High Courts, the Supreme Court, the District Consumer Fora, the State Consumer Commissions, the National Consumer Commission, the Armed Forces Tribunals, The Central Information Commission, and the like since inception of the E.C.H.S., i.e. the year 2003, and till date, and publish the same in the websites of the E.C.H.S. and the D.E.S.W. in the manner stated as follows:

a) A list of the followings:

- i) Case No. and Case Year.*
- ii) Case Type.*
- iii) Names of the Plaintiff and the Defendant.*
- iv) Name of the court, forum, commission, tribunal, etc.*

b) Publish the copies of decisions, orders, or judgements of such cases as available with the E.C.H.S.

2) Publish the in the websites of the E.C.H.S. and the D.E.S.W. the following amounts relevant to the period: since inception of the E.C.H.S., i.e. the year 2003, and till date:

a) interest paid by the E.C.H.S. to the beneficiaries on the reimbursement-claims that were denied or rejected by the E.C.H.S.

b) compensation and cost paid by the E.C.H.S. to the beneficiaries for harassment, mental agony, and cost of litigations.

3) On the website of the E.C.H.S. and the D.E.S.W., henceforth suo moto regularly update the information sought in the S. No. 1 and 2 above, u/s 4 (1) (b) (xvii), and 4 (2) of the Right to Information Act, 2005.

4) It is quite indispensable that the details of the official also be published to whom the beneficiaries can file complaints of the cases missing from the aforesaid lists.

The CPIO furnished a reply to the Appellant on 07.03.2023 stating as under:

"It is informed that reply furnished by CO, ECHS vis-à-vis queries raised by RTI applicant in his application dated 13.02.2023 has been examined in accordance with the provisions contained in RTI Act, 2005. Accordingly, following aspects have been noticed: -

i. that the individual has not sought for any specific "Information" (as defined under Sec 2(f) of RTI Act, 2005) because he has not sought for any material in any form including records, documents, memos, e-mails etc. Rather, it is seen that the applicant has given direction to the Public Authority by mentioning the term "Gather the records of all the disposed/ cleared/ non pending cases by or against the ECHS in the High Courts, The Supreme Court, the District Fora etc." As such RTI applicant does not have power to give any direction to Public Authority within the jurisdiction of the RTI Act, 2005 & rather it is incumbent upon him to seek "information" only under Sec 2(f) of RTI Act, 2005. In case he finds any lacuna in the system, then he may lodge complaint against different authorities, if any systematic infirmities are noticed by him. Also, such

complaint may only be lodged at CVC at its portal (evc.nic.in) or in written form. Because, Public Authority only has the responsibility of providing information to RTI applicant under RTI Act, 2005, while other agencies have different responsibilities of gathering or uploading information, as & when these are mandated under law. RTI applicant discuss about activities, which are to be taken by such different authorities. These different authorities will however work in tandem with Public Authority/ CPIO for improving the system in such a manner so that "information" can be disseminated in public interest to the larger benefits of the society.

Therefore, suggestion of RTI applicant has been taken into cognizance. In this context, it is seen that the reply given by CO, ECHS is correct to the extent this has been given in term of provision contained in Sec 2(f) of RTI Act, 2005. However, CO, ECHS should indicate Sec 2(f) invariably in all their correspondences.

ii. that the individual has not sought for any specific information (as defined under Sec 2(f) of RTI Act, 2005) because he has not sought for any material in any form including records, documents, memos, e-mails etc. Rather, it is seen from the applicant has given direction to the public authority by mentioning "Publish in the websites of the ECHS and the DESW the following amounts relevant to the period: since inception of the ECHS i.e. the year 2003 and till date etc." As such RTI applicant does not have power to give any direction to Public authority within the jurisdiction of the RTI Act, 2005 & rather it is incumbent upon him to seek information only under Sec 2(f) of RTI Act, 2005. In this context, it is seen that the reply given by CO, ECHS is correct to the extent this has been given in term of provision contained in Sec 2(f) of RTI Act. 2005.

iii. In this query, the RTI applicant has not sought any information and rather requests or guides the Public Authority to act in accordance with Section 4(1)(b)(xvii) and 4(2) of RTI Act, 2005. Even he does not make any complaint against Public Authority & rather apprises about the provisions under the above-mentioned Section 4(1)(b)(xvii) & 4(2) of RTI Act, 2005 & requests for acting for updating of information in ECHS & DESW. This opinion of RTI applicant is praiseworthy & has been taken cognizance for optimization in future Endeavour by the Public Authority.

iv. The query raised by RTI applicant is again not an information under Section 2(f) of RTI Act, 2005. RTI applicant seeks details of officials with whom the RTI beneficiaries may file complaints in the event of any

grievances. To this extent the reply furnished by CO, ECHS seems proper. Hence the issue appears resolved.”

Being dissatisfied, the appellant filed a First Appeal dated 04.04.2023. The FAA vide its order dated 09.05.2023.

Feeling aggrieved and dissatisfied, appellant approached the Commission with the instant Second Appeal.

Relevant Facts emerged during Hearing:

The following were present:-

Appellant: Along with his father Shri Gopal Chakraborty, present through video-conference.

Respondent: Shri N. K. Panda, Deputy Director & CPIO, DESW along with Shri Deepak Pant, J.S.A., DESW and Col. Anirudh Bhardwaj, Director, CO ECHS- Delhi Cantt. Present in person.

Written submissions of the parties are taken on record.

Appellant narrated the genesis of the instant matters being non-imbursement of ECHS beneficiaries. He contended that relevant information was not uploaded by the Respondents on their weblink under *suo-moto* disclosures in keeping with the letter and spirit of RTI Act. In case No. CIC/DESW/A/2022/664968, FAA has failed to adjudicate First Appeal despite repeated reminders.

Shri N. K. Panda, Deputy Director & CPIO, DESW submitted that timely response has already been provided to the Appellant against the RTI Applications. In case No. CIC/DESW/A/2022/664968, FAA disposed of the First Appeal on 15.09.2022 and a copy of said order was already dispatched to the Appellant through speed post. He agreed to resend copy of FAA's order to the Appellant with the proof of dispatch receipt through which order has been send to the Appellant. Respondent apprised the Commission that no specific information has been sought by the Appellant in instant cases, rather he advised the CPIOs to disclose the information on their weblink.

Appellant interjected to contend the inaction of the Respondent Public Authority in not reimbursing the genuine claims of the beneficiaries which is a matter of concern.

Decision:

The Commission after adverting to facts and circumstances of the case and upon a perusal of the facts on record finds that the dissatisfaction of the Appellant with the reply provided by the CPIO is bereft of merit as the queries raised in the RTI Application do not strictly conform to the definition of “information” as per Section 2(f) of RTI Act. It appears that the Appellant is harbouring a grievance and is not seeking access to information as envisaged under the RTI Act. Despite this, the CPIO has provided response to the Appellant in the spirit of RTI Act.

For better understanding of the mandate of the RTI Act, the Appellant shall note that outstretching the interpretation of Section 2(f) of the RTI Act to include deductions and inferences to be drawn by the CPIO is unwarranted as it casts immense pressure on the CPIOs to ensure that they provide the correct deduction/inference to avoid being subject to penal provisions under the RTI Act.

In this regard, the Appellant’s attention is drawn towards a judgment of the Hon’ble Supreme Court on the scope and ambit of Section 2(f) of RTI Act in the matter of **CBSE vs. Aditya Bandopadhyay & Ors.**[CIVIL APPEAL NO.6454 of 2011]wherein it was held as under:

*“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information **that is available and existing.....A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.” (Emphasis Supplied)***

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Similarly, in the matter of **Khanapuram Gandaiah vs Administrative Officer &Ors.** [SLP (CIVIL) NO.34868 OF 2009], the Hon’ble Supreme Court held as under:

“7....Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get

only such information which can be accessed by the "public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him...." (Emphasis Supplied)

And, in the matter of **Dr. Celsa Pinto, Ex-Officio Joint Secretary, (School Education) vs. The Goa State Information Commission** [2008 (110) Bom L R 1238], the Hon'ble Bombay High Court held as under:

"..... Section 2(f) -Information means any material in any form, including records, documents, memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information." (Emphasis Supplied)

Similarly, the Appellant is advised about the powers of the Commission under the RTI Act by relying on certain precedents of the superior Courts as under:

The Hon'ble High Court of Delhi in the matter of **Hansi Rawat and Anr. v. Punjab National Bank and Ors. (LPA No.785/2012) dated 11.01.2013** has held as under:

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"6.proceedings under the RTI Act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished."(Emphasis Supplied)

The aforesaid rationale finds resonance in another judgment of the Hon'ble Delhi High Court in the matter of **Govt. of NCT of Delhi vs. Rajender Prasad (W.P.[C] 10676/2016) dated 30.11.2017** wherein it was held as under:

“6. The CIC has been constituted under Section 12 of the Act and the powers of CIC are delineated under the Act. The CIC being a statutory body has to act strictly within the confines of the Act and is neither required to nor has the jurisdiction to examine any other controversy or disputes.”

While, the Apex Court in the matter of **Union of India vs Namit Sharma (Review Petition [C] No.2309 of 2012) dated 03.09.2013** observed as under: 0

“20. ...While deciding whether a citizen should or should not get a particular information “which is held by or under the control of any public authority”, the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority....” (Emphasis Supplied)

The Appellant is therefore, advised to exercise his right to information in an informed and judicious manner in the future.

In case No. CIC/DEXSW/A/2022/664968 –

In furtherance of hearing proceedings, the Respondent is directed to resend a copy of FAA's order dated 15.09.2022 along with proof of dispatch receipt acknowledging post of said order to the Appellant at first instance. This direction should be complied with by the Respondent within one week from the date of receipt of this order and a compliance report to this effect shall be uploaded by the Respondent on the Commission's website through a link given in the hearing notice.

With the abovesaid observations, both the appeals are disposed accordingly.

Vinod Kumar Tiwari (विनोद कुमार तिवारी)
Information Commissioner (सूचना आयुक्त)

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(R K Rao)
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